

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IRWIN FRANCHISE CAPITAL CORPORATION,

Plaintiff,

-against-

WINDRAM ENTERPRISES, INC.,

Defendant.
-----X

07 Civ. 3785 (WCC)

**NOTICE OF
MOTION**

PLEASE TAKE NOTICE THAT, upon the Memorandum of Law in Support of Motion to Dismiss Amended Counterclaims, plaintiff will make a motion before this Court for an Order pursuant to Rule 9 (b) of the federal Rules of Civil Procedure dismissing the first, second and third amended counterclaims for failure to plead fraud with particularity, together with such further and different relief as the Court may deem just and proper.

Dated: New York, New York
November 14, 2007

Paykin Mahon Rooney & Krieg, LLP

By: s/
Joseph N. Paykin, Esq.- JP (3410)
Attorneys for Plaintiff
185 Madison Avenue
New York, New York 10016
(212) 725-4423

To: Mackiewicz & Associates
Attorneys for Defendant
625 Washington Street
Hoboken, New Jersey 07030

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**AFFIRMATION
OF SERVICE**

James Klatsky, an attorney admitted to practice law before this Court, affirms the truth of the following under the penalties of perjury: I am over the age of eighteen, am not a party to this action, and reside in Merrick, New York. On November 14, 2007 I served the Notice of Motion dated November 14, 2007 and Memorandum of Law of Law in Support of Motion to Dismiss Amended Counterclaims by ECF filing, together with a copy by first-class mail:

Mackiewicz & Associates
Attorneys for Defendant
625 Washington Street
Hoboken, New Jersey 07030

Dated: New York, New York
November 14, 2007

s/
James Klatsky